

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

P.L.C.G.
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FILE: B-194123.2

DATE: April 6, 1979

MATTER OF: Echols Electric, Inc.

[Protest of IFB Cancellation]
DIGEST:

DL 01421

1. Determination to cancel competitive solicitation and set aside procurement under section 8(a) of Small Business Act is matter for contracting agency and SBA, and will not be reviewed by GAO in absence of showing of fraud or bad faith on part of Government officials.
2. Protest filed more than 10 days after basis for protest is known is untimely under GAO Bid Protest Procedures.

Echols Electric, Inc. (Echols) protests the cancellation of invitation for bids (IFB) No. F34650-79-B-0024, issued by the Department of the Air Force (Air Force) for alteration of a lighting system. Echols, a minority-owned small business, contends that cancellation of the IFB and award of the contract under section 8(a) of the Small Business Act denied it an opportunity to compete for Phase II of the project even though it had been "permitted to bid on Phase I."

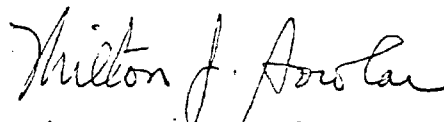
Section 8(a) of the Small Business Act (15 U.S.C. 637(a), as amended by Pub. L. 95-507, October 24, 1978, 92 Stat. 1757), authorizes the Small Business Administration (SBA) to enter into contracts with any Government agency having procurement powers. The contracting officer of the procuring agency is authorized in his discretion to let the contract to SBA upon such terms and conditions as may be agreed upon between SBA and the procuring agency. In light of that discretionary authority, we do not review determinations to award contracts under section 8(a) unless there is a showing of fraud on the part of Government officials or

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such willful disregard of the facts as to necessarily imply bad faith. See Chemical Technology, Inc., B-190165, January 18, 1978, 78-1 CPD 46; Jet Services, Inc., B-186066, May 4, 1976, 76-1 CPD 300. No such showing has been made.

Moreover, the protest is untimely. Our Bid Protest Procedures require that protests be filed, either with the contracting agency or with this Office, not later than 10 working days after the basis for protest is known. 4 C.F.R. § 20.2 (1978). Echols was advised by a letter from the Air Force received January 19, 1979 that the IFB was canceled and that the contract would be awarded under the SBA's section 8(a) program. Echols, however, protested to this Office by letter dated February 9, 1979, which was received (filed) well after that date, thereby rendering the protest untimely. See Kings Point Manufacturing Company, Inc., B-191452, April 19, 1978, 78-1 CPD 306; Baytron Systems Corporation, B-192329, July 24, 1978, 78-2 CPD 67.

Consequently, we will not consider the protest, which is dismissed.



Milton J. Socolar
General Counsel